

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

Case No. 18-cr-0233-PJH

v.

ORDER ON MOTION FOR
SENTENCE REDUCTION UNDER
18 U.S.C. § 3582(c)(1)(A)

(COMPASSIONATE RELEASE)

JOSHUWA HERNANDEZ,

Defendant.

Upon motion of ☒ the defendant ☐ the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,

IT IS ORDERED that the motion is:

A. ☒ GRANTED

☐ The defendant's previously imposed sentence of imprisonment of _____ is reduced to _____ . If this sentence is less than the amount of time the defendant already served, the sentence is reduced to a time served; or

☒ Time served.

If the defendant's sentence is reduced to time served:

☐ This order is stayed for up to fourteen days, for the verification of the defendant's residence and/or establishment of a release plan, to make appropriate travel arrangements, and to ensure the defendant's safe release. The defendant shall be released as soon as a residence is verified,

a release plan is established, appropriate travel arrangements are made, and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, the parties shall immediately notify the court and show cause why the stay should be extended; or

☒ There being a verified residence and an appropriate release plan in place, this order is stayed for up to fourteen days to make appropriate travel arrangements and to ensure the defendant's safe release. The defendant shall be released as soon as appropriate travel arrangements are made and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, then the parties shall immediately notify the court and show cause why the stay should be extended.

☐ The defendant must provide the complete address where the defendant will reside upon release to the probation office in the district where they will be released because it was not included in the motion for sentence reduction.

☐ Under 18 U.S.C. § 3582(c)(1)(A), the defendant is ordered to serve a "special term" of ☐ probation or ☐ supervised release of _____ months (not to exceed the unserved portion of the original term of imprisonment).

☐ The defendant's previously imposed conditions of supervised release apply to the "special term" of supervision; or

☐ The conditions of the “special term” of supervision are as follows:

☒ The defendant’s previously imposed three (3) year term of supervised release and the mandatory, standard, and special conditions originally imposed remain unchanged.

☐ The defendant’s previously imposed conditions of supervised release are modified as follows:

B. ☐ DEFERRED pending supplemental briefing and/or a hearing. The court DIRECTS the United States Attorney to file a response on or before _____, along with all Bureau of Prisons records (medical, institutional, administrative) relevant to this motion.

C. ☐ DENIED after complete review of the motion on the merits.

D. ☒ FACTORS CONSIDERED (Optional), if motion is Granted or Denied on the merits

As an initial matter, the court notes that the government took no position on the merits of defendant’s motion, including whether defendant had properly exhausted administrative remedies.

1. Extraordinary and Compelling Reasons to Warrant Reduction of Term of Imprisonment Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) and Consistent with Applicable Policy Statements

Defendant has submitted evidence that he suffers from moderate to severe asthma, which the Centers for Disease Control and Prevention (CDC) have identified as a medical condition that increases the risk of severe illness from the virus that causes COVID-19. See Dkt. 72-1, 72-2. Defendant’s evidence indicates that he experiences near-daily symptoms from his asthma, and has a history of experiencing severe breathing difficulties, including one instance when he was admitted to an intensive care unit and intubated on a ventilator for one to two weeks. Id.

Defendant has also submitted evidence showing that he has suffered from asthma since he was a young child and has used an Albuterol inhaler for as long as he can remember. See Dkt. 72-1, 72-2. Defendant has submitted peer-reviewed literature indicating that his symptoms would be classified as moderate-to-severe based on accepted national asthma management guidelines. See Dkt. 72 at 2, n.1.

On this record, defendant has established that he suffers from a “serious physical or medical condition” that “substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover,” See U.S.S.G. § 1B1.13 cmt. n.1(A)(ii)(I). Defendant’s medical condition and medical history, in combination with the likelihood that defendant may contract COVID-19 while incarcerated and suffer severe symptoms as a result, are in this case sufficient to warrant the requested reduction of term of imprisonment.

2. Applicable 18 U.S.C. 3553(a) Factors (*Mark all that apply*)

- ☐ The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1):
- | | | |
|--|--|--|
| <input type="checkbox"/> Mens Rea | <input type="checkbox"/> Extreme Conduct | <input type="checkbox"/> Dismissed/Uncharged Conduct |
| <input type="checkbox"/> Role in the Offense | | <input type="checkbox"/> Victim Impact |
| <input type="checkbox"/> <i>Specific considerations:</i> | | |
- ☐ The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1):
- | | |
|---|---|
| <input type="checkbox"/> Aberrant Behavior | <input type="checkbox"/> Lack of Youthful Guidance |
| <input type="checkbox"/> Age | <input type="checkbox"/> Mental and Emotional Condition |
| <input type="checkbox"/> Charitable Service/Good Works | <input type="checkbox"/> Military Service |
| <input type="checkbox"/> Community Ties | <input type="checkbox"/> Non-Violent Offender |
| <input type="checkbox"/> Diminished Capacity | <input type="checkbox"/> Physical Condition |
| <input type="checkbox"/> Drug or Alcohol Dependence | <input type="checkbox"/> Pre-sentence Rehabilitation |
| <input type="checkbox"/> Employment Record | <input type="checkbox"/> Remorse/Lack of Remorse |
| <input type="checkbox"/> Family Ties and Responsibilities | <input type="checkbox"/> Other: (<i>Specify</i>) |
- ☐ Issues with Criminal History: (*Specify*)
- ☐ To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (*18 U.S.C. § 3553(a)(2)(A)*)

- ☐ To afford adequate deterrence to criminal conduct (*18 U.S.C. § 3553(a)(2)(B)*)
- ☐ To protect the public from further crimes of the defendant (*18 U.S.C. § 3553(a)(2)(C)*)
- ☐ To provide the defendant with needed educational or vocational training (*18 U.S.C. § 3553(a)(2)(D)*)
- ☐ To provide the defendant with medical care (*18 U.S.C. § 3553(a)(2)(D)*) (*Specify*)
- ☐ To provide the defendant with other correctional treatment in the most effective manner (*18 U.S.C. § 3553(a)(2)(D)*)
- ☐ To avoid unwarranted sentencing disparities among defendants (*18 U.S.C. § 3553(a)(6)*) (*Specify*)
- ☐ To provide restitution to any victims of the offense (*18 U.S.C. § 3553(a)(7)*)
- ☒ ***Specific considerations:*** Defendant has served all but seven days of the sentence that was originally imposed by this court. The court therefore finds that the goals and purposes of the factors set forth in section 3553(a) would be equally met by the time of imprisonment that defendant has already served. Reducing defendant's sentence by seven days would not result in any unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct, and would still reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, and afford adequate deterrence to criminal conduct.

E. ☐ DENIED WITHOUT PREJUDICE because the defendant has not exhausted all

administrative remedies as required in 18 U.S.C. § 3582(c)(1)(A), nor have 30 days lapsed since receipt of the defendant's request by the warden of the defendant's facility.

IT IS SO ORDERED.

Dated: January 14, 2021

/s/ Phyllis J. Hamilton
Phyllis J. Hamilton
UNITED STATES DISTRICT JUDGE